



1997 SENATE BILL 145

April 2, 1997 - Introduced by Senators BRESKE, WINEKE, SCHULTZ, JAUCH, ROSENZWEIG, C. POTTER, HUELSMAN, SHIBILSKI, FARROW, WIRCH and BUETTNER, cosponsored by Representatives GREEN, FREESE, MEYER, VRAKAS, RUTKOWSKI, ALBERS, WASSERMAN, KREIBICH and PLALE. Referred to Committee on Health, Human Services, Aging, Corrections, Veterans and Military Affairs.

1 **AN ACT to renumber and amend 655.23 (4); to amend 619.01 (7) (a); and to**
2 **create 655.23 (4) (b), 655.23 (4) (c) and 655.23 (4) (d) of the statutes; relating**
3 **to: increasing the limits, and authorizing occurrence or claims-made coverage,**
4 **for health care liability insurance and granting rule-making authority.**

Analysis by the Legislative Reference Bureau

The health care liability provisions under current law require certain health care providers, including physicians, nurse anesthetists, ambulatory surgery centers, nursing homes and hospitals, to carry health care liability insurance with liability limits of at least \$400,000 for each occurrence and at least \$1,000,000 for all occurrences in any policy year. Any portion of a medical malpractice claim that exceeds the policy limits is paid by the patients compensation fund for health care providers that are subject to the health care liability provisions.

This bill provides that health care liability insurance may provide either occurrence or claims-made coverage and that, before the date on which the bill becomes law, health care liability insurance may have provided either occurrence or claims-made coverage. (Generally, occurrence coverage provides insurance for negligent acts committed during the time that a policy is in effect, while claims-made coverage provides insurance for negligent acts for which claims are made during the time that a policy is in effect regardless of when the negligent acts were committed.) For occurrence coverage, the liability limits apply to each occurrence within a specified time period and to all occurrences in any one policy year for occurrences within that specified time period. For claims-made coverage, the liability limits

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apply to each claim arising from an occurrence within the specified time period, regardless of when the claim is made, and to all claims in any one reporting year for claims made within that specified time period. The bill authorizes the commissioner of insurance to promulgate rules for the application of the liability limits to reporting years following the termination of claims-made coverage.

In addition, the bill raises the minimum required limits of liability for health care liability insurance to \$1,000,000 for each occurrence on or after July 1, 1997, and \$3,000,000 for all occurrences in any one policy year or all claims made in any one reporting year for occurrences or claims made on or after July 1, 1997. A self-insured health care provider, however, may phase in over a 4-year period the higher coverage limit that applies to separate occurrences on or after July 1, 1997.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 619.01 (7) (a) of the statutes is amended to read:

2 619.01 (7) (a) *Primary coverage plans.* Health care liability insurance plans
3 established under this paragraph shall provide minimum coverage to insureds in the
4 amount of not less than \$200,000 for each occurrence and \$600,000 for all
5 occurrences in any one policy year for occurrences before July 1, 1987, \$300,000 for
6 each occurrence and \$900,000 for all occurrences in any one policy year for
7 occurrences on or after July 1, 1987, and before July 1, 1988, and \$400,000 for each
8 occurrence and \$1,000,000 for all occurrences in any one policy year for occurrences
9 on or after July 1, 1988, and before July 1, 1997, and \$1,000,000 for each occurrence
10 and \$3,000,000 for all occurrences in any one policy year for occurrences on or after
11 July 1, 1997, for the protection of persons who are legally entitled to recover damages
12 from the insured for errors, omissions or neglect in the performance of the insured's
13 professional services. If an insured has excess limits liability coverage or such
14 coverage is available to the insured, the coverage provided under such plans shall be
15 equal to the minimum level of such excess limits coverage. If the insured does not
16 have excess limits liability coverage and such coverage is not available to the

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1 insured, the commissioner may establish minimum levels of coverage higher than
2 the minimum limits specified in this paragraph for such plans.

3 **SECTION 2.** 655.23 (4) of the statutes is renumbered 655.23 (4) (a) and amended
4 to read:

5 655.23 (4) (a) ~~Health care liability insurance, self-insurance or a~~ A cash or
6 surety bond under sub. (3) (d) shall be in amounts of at least \$200,000 for each
7 occurrence and \$600,000 ~~per year~~ for all occurrences in any one policy year for
8 occurrences before July 1, 1987, \$300,000 for each occurrence and \$900,000 for all
9 occurrences in any one policy year for occurrences on or after July 1, 1987, and before
10 July 1, 1988, and \$400,000 for each occurrence and \$1,000,000 for all occurrences in
11 any one policy year for occurrences on or after July 1, 1988.

12 **SECTION 3.** 655.23 (4) (b) of the statutes is created to read:

13 655.23 (4) (b) 1. Except as provided in par. (c), before July 1, 1997, health care
14 liability insurance may have provided either occurrence or claims-made coverage.
15 The limits of liability shall have been as follows:

16 a. For occurrence coverage, at least \$200,000 for each occurrence and \$600,000
17 for all occurrences in any one policy year for occurrences before July 1, 1987,
18 \$300,000 for each occurrence and \$900,000 for all occurrences in any one policy year
19 for occurrences on or after July 1, 1987, and before July 1, 1988, and \$400,000 for
20 each occurrence and \$1,000,000 for all occurrences in any one policy year for
21 occurrences on or after July 1, 1988, and before July 1, 1997.

22 b. For claims-made coverage, at least \$200,000 for each claim arising from an
23 occurrence before July 1, 1987, regardless of when the claim is made, and \$600,000
24 for all claims in any one reporting year for claims made before July 1, 1987, \$300,000
25 for each claim arising from an occurrence on or after July 1, 1987, and before July

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1 1, 1988, regardless of when the claim is made, and \$900,000 for all claims in any one
2 reporting year for claims made on or after July 1, 1987, and before July 1, 1988, and
3 \$400,000 for each claim arising from an occurrence on or after July 1, 1988, and
4 before July 1, 1997, regardless of when the claim is made, and \$1,000,000 for all
5 claims in any one reporting year for claims made on or after July 1, 1988, and before
6 July 1, 1997.

7 2. Except as provided in par. (c), on and after July 1, 1997, health care liability
8 insurance may provide either occurrence or claims-made coverage. The limits of
9 liability shall be as follows:

10 a. For occurrence coverage, at least \$1,000,000 for each occurrence and
11 \$3,000,000 for all occurrences in any one policy year for occurrences on or after July
12 1, 1997.

13 b. For claims-made coverage, at least \$1,000,000 for each claim arising from
14 an occurrence on or after July 1, 1997, and \$3,000,000 for all claims in any one
15 reporting year for claims made on or after July 1, 1997.

16 **SECTION 4.** 655.23 (4) (c) of the statutes is created to read:

17 655.23 (4) (c) 1. Except as provided in subd. 2., self-insurance shall be in
18 amounts of at least \$200,000 for each occurrence and \$600,000 for all occurrences in
19 any one policy year for occurrences before July 1, 1987, \$300,000 for each occurrence
20 and \$900,000 for all occurrences in any one policy year for occurrences on or after
21 July 1, 1987, and before July 1, 1988, \$400,000 for each occurrence and \$1,000,000
22 for all occurrences in any one policy year for occurrences on or after July 1, 1988, and
23 before July 1, 1997, and \$1,000,000 for each occurrence and \$3,000,000 for all
24 occurrences in any one policy year for occurrences on or after July 1, 1997.

